

Ms Cheryl Lindros Dolan  
Bergeson & Campbell, PC  
1203 19<sup>th</sup> St., #300  
Washington, DC 20036-2401

CONTAINS NO  
CBI

RE: Prenotice Communication #5579

Dear Ms Dolan:

You sent an email on 4 March 2010 to Dave Schutz, of my staff, on behalf of a client. Your client manufactures a chemical substance under the terms of an LVE which it holds, and sells the material to a customer outside the United States. Outside the US, the LVE material is formulated into a product, in which its chemical identity does not change. You asked what the status of the LVE material in the formulation is if it is reimported into the US. We need to discuss two situations here: import by the LVE holder, and import by any other person.

An importer is considered under the TSCA to be itself manufacturing the material [15 USC 2602(7): 'The term "manufacture" means to import into the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States), produce, or manufacture.'] For import of the substance which is incorporated into a formulation and which will be imported as a part of the formulation, a reimporter which has itself exported the material on which it holds an LVE is subject to all of the requirements to which it agreed as a condition of receiving the LVE under 40 CFR 723.50. These requirements include the annual quantity restriction and the customer notification requirements at 40 CFR 723.50 (k). This leads to the counter-intuitive result that the reimporter, even though it has recorded the material against its limit at the time of manufacture, must count the imported material a second time against its quantitative limit. Though the reimported material is counted twice against the quantitative limit, you have told us that it is otherwise within the terms of the LVE, thus no new LVE application need be filed. You can send us the letter described at (j)(6) to cover the fact that the material will be imported at a new site, if that is the case.

Because import is equivalent to manufacture in the statute, an importer which is not the original LVE holder for the material must also file an LVE or a PMN to enable it to bring the material into the US for distribution. I hope this discussion adequately addresses your concerns. If you have remaining questions, feel free to contact Dave Schutz, of my staff, on 202-564-9262.

CONCURRENCE				
SYMBOL	7405M	7405M	7405M	7405M
SURNAME	Schutz <i>[Signature]</i>	Seidenstein <i>[Signature]</i>	<del>Lee</del> <i>[Signature]</i>	Schweer <i>[Signature]</i>
DATE	3/22/10	4-12-10	4/12/10	4-12-10

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